

CITY OF SAN JOSÉ, CALIFORNIA  
Department of Planning, Building and Code Enforcement  
801 North First Street, Room 400  
San José, California 95110-1795

Hearing Date/Agenda Number  
P.C. 11/28/01      Item

File Number  
CP01-09-078

Application Type  
Conditional Use Permit

Council District  
7

Planning Area  
Evergreen

Assessor's Parcel Number(s)  
670-02-027

## STAFF REPORT

### PROJECT DESCRIPTION

Completed by: Rachna

Location: West side of Alvin Avenue 300 southerly of Tully Road (2444 Alvin Avenue)

Gross Acreage: 0.63      Net Acreage: 0.63      Net Density: n/a

Existing Zoning: CG- Commercial General      Existing Use: Existing restaurant

Proposed Zoning: No change      Proposed Use: 24 hour operation of an existing restaurant

### GENERAL PLAN

Completed by: R

Land Use/Transportation Diagram Designation  
General Commercial

Project Conformance:  
☒ Yes    ☐ No  
☒ See Analysis and Recommendations

### SURROUNDING LAND USES AND ZONING

Completed by: R

North: Shopping Center      CG- Commercial General

East: Shopping Center      CG- Commercial General

South: Post Office      CG- Commercial General

West: Shopping Center      CG- Commercial General

### ENVIRONMENTAL STATUS

Completed by: R

☐ Environmental Impact Report found complete  
☐ Negative Declaration  
☐ Negative Declaration adopted on

☒ Exempt  
☐ Environmental Review Incomplete

### FILE HISTORY

Completed by: R

Annexation Title: Hillview No. 50

Date: April 30, 1965

### PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

☐ Approval  
☐ Approval with Conditions  
☒ Denial  
☐ Uphold Director's Decision

Date: \_\_\_\_\_

Approved by: \_\_\_\_\_

☐ Action  
☒ Recommendation

### APPLICANT/DEVELOPER

### OWNER

Beatriz Alvarez  
2751 Sugarplum Drive  
San Jose,  
CA 95148

Antonio Galindo, et al  
El Grullense Restaurant  
3158 Remington Way  
San Jose, CA 95148

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**PUBLIC AGENCY COMMENTS RECEIVED**

Completed by: Rachna

Department of Police

Attached

Other Departments and Agencies

None received

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**GENERAL CORRESPONDENCE**

Attached City Council Policy (6-27), Evaluation of 24-hour Uses

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**ANALYSIS AND RECOMMENDATIONS**

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**BACKGROUND**

The applicant, Beatriz Alvarez, is requesting a Conditional Use Permit to allow 24 hour daily operation of the existing El Grullense Restaurant located at 2444 Alvin Avenue. The Zoning Ordinance requires a Conditional Use Permit for commercial businesses operating between the hours of 12:00 midnight and 6:00 a.m.

The proposed use is located in a small retail building originally designed to accommodate two to three tenants. The existing restaurant, which has a seating capacity of 65 people, opened approximately 10 years ago. The existing building formerly included a nightclub under a different ownership within the rear most tenant space. However this use vacated the premises in 1999. The subject restaurant is currently the only tenant in the building. Although not directly related to this permit, the business owner has indicated a desire to lease the entire building and expand seating capacity. Provided that adequate parking is provided, an expansion into the vacated tenant space would be allowed by right and not be subject to the Conditional Use Permit process.

Surrounding land uses include retail to the north, east, and west and a post office building to the south. Currently, the hours of operation are from 6:00 AM to 12 midnight. The restaurant serves alcoholic beverages and has no outdoor seating.

**ENVIRONMENTAL REVIEW**

The Director of Planning has determined that this project is exempt from environmental review pursuant to Section 15301 under the provisions of the California Environmental Quality Act (CEQA) in that there is no expansion of the existing use or structures.

**GENERAL PLAN CONFORMANCE**

The proposed 24-hour operation of a restaurant use is consistent with the San José 2020 General Plan Land Use/Transportation Diagram designation of General Commercial in that it is a commercial use.

## ANALYSIS

This project was analyzed for conformance to key elements of the City's Policy for Evaluation of 24-hour Uses and appropriateness based on site design considerations.

### Conformance to City Council Policy (6-27), Evaluation of 24 Hour Uses

The City Council Policy for Evaluation of 24-Hour Uses is intended to provide guidelines for appropriate development of commercial businesses that operate on a 24-hour basis in the City (see attached). The policy requires that any potentially significant problems associated with late night uses be considered in the review process. The problems associated with late night uses include; crime, gang activity, drugs, litter, loitering, and noise. This project conforms to some of the basic policy objectives, but has serious problems with regard to Police issues as discussed below.

**Area Use Compatibility.** The policy states that "sit down" restaurants do not generally exhibit the problems normally associated with "take-out" restaurants because patrons do not remain in their vehicles in the parking lot and food is consumed within the building with appropriate supervision. Litter is not typically a problem as food is not served in disposable wrappings or containers. Therefore, impacts from littering, loitering, and noise are substantially reduced by the nature of the proposed use. The proposed site is a 'sit-down' restaurant. Since the site is surrounded only by other commercial uses, and since the nearest residential use is over 400 feet away, any resulting late night problems with the subject use are not likely to cause an impact to a residential use.

**Use Separation.** The policy recommends a 300-foot separation between late night uses and residential properties. The primary consideration is to ensure that the proposed use does not impact nearby residential uses. As previously indicated, the proposed site provides adequate separation from residential uses in that the use is located over 400-foot from the closest residential property line.

**Police Issues.** The policy recommends that crime statistics and police safety issues on the site shall be analyzed and considered in determining the appropriateness of 24-hours uses. The Police Department has raised serious concerns with the proposal for the extended late night hours of operation. The proposed restaurant site has a history of several disturbances including drunken fights, incidents of alcohol intoxication, and weapons associated events in the past few years. Since 1999, the Police Department received 103 calls for the various disturbances related to the subject restaurant. The nightclub use, which was closed in late 1999, had contributed to an even greater number of calls for Police service. Since the closure of the adjacent nightclub, calls for service has dropped slightly, but the overall number remains high in that 22 calls for service have been placed so far this year.

The Police Department has indicated that although the project may conform to several of the elements of the City Council Policy for 24-Hour Uses, the past performance over the last three (3) years does not bode well for public safety. It is for this reason that the Police Department is strongly recommending denial of the request for 24-hour operation of the subject restaurant. The Police Department has indicated that should the Planning Commission decide to consider approval of this permit, conditions should be imposed requiring the restaurant owner to hire off-duty police security between the hours of 10:00 p.m. to 3:00 a.m. Thursdays through Sundays.

The applicant has indicated a general willingness to reduce the request for late night hours until 3:00 a.m., and provide security surveillance or hire private security to help to address the police concerns. However, the Planning and Police Department staff feels that such measures are not likely to be adequate, since this localized area has such significant crime problems.

#### Site Location Considerations

The restaurant building fronts on to Alvin Avenue, a minor street. According to the Police Department, the subject restaurant is located in a problematic crime niche that is not afforded direct surveillance opportunities as commercial uses as nearby, heavily traveled Tully Road.

While the existing use and parking lot on the site conforms to the City's parking requirements, the location of the much of the parking area behind the building further exacerbates surveillance problems. Due to the narrow and deep shape of the site and being surrounded by other buildings on three sides and fences on one side, much of the parking lot is somewhat obscured from visibility from the street and conducive for potential for criminal activities.

#### Conclusion

The City is generally supportive of commercial uses operating past midnight if the proposal conforms to the Council policy. Likewise, the city does not support such requests if there are legitimate reasons or concerns. The significant number of police calls at this location is a major concern and sufficient reason for not supporting this request at this time. Additionally, the existing site layout precludes parking lot visibility from the street which has been problematic for effective Police surveillance. Further, the location on a small, less traveled street adds to such surveillance difficulties. Based on high crime statistics for this specific use and the immediate vicinity, Planning Staff feels that the proposal to extend the restaurant's operating hours past midnight does not conform to the City Council Policy 6-27, Evaluation of 24-hour Uses. Further, the Police Department has recommended against the proposal.

#### **RECOMMENDATION**

Based upon the above analysis, the Planning staff recommends that the Planning Commission deny the requested Conditional Use Permit and include the following findings and conditions in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of General Commercial on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The project site is located in the CG-Commercial General Zoning District.
3. Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from the environmental review requirements of Title 21 of the San Jose Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. The project will not have a significant adverse effect on the environment.

4. The subject site is generally surrounded by commercial shopping center uses to the north, east, west, and post office to the south.
5. The project consists of a 'sit-down' restaurant containing 65 dining seats.
6. The existing restaurant has been in operation for 10 years.
7. The existing restaurant is the only tenant in the subject commercial building.
8. The current restaurant hours are from 6:00 AM to 12 midnight. The restaurant is proposing to extend its operating hours past midnight.
9. The restaurant has an approximate floor area of 4,820 square feet.
10. The restaurant building is located directly adjacent to Alvin Avenue, a collector street.
11. The proposed use is not located next to residential uses.
12. The existing restaurant has adequate parking per the Zoning Ordinance.
13. The majority of the parking for the site is located behind the building.
14. The existing restaurant serves alcoholic beverages.
15. The existing restaurant does not provide amplified music for entertainment purposes.
16. The City Council Policy (6-27), Evaluation of 24 Hour Uses is applicable to the project.
17. The above policy indicates that crime statistics and police safety issues should be considered in analyzing the appropriateness of application approvals.
18. The Police Department has identified 103 disturbance-related calls in the past three years and 22 for this year related to the existing restaurant use.
19. The Chief of Police recommends that the request not be approved based on the crime statistics and police safety issues directly related to the existing use.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project is consistent with the adopted San Jose 2020 General Plan Land Use/Transportation Diagram of the City of San Jose.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act.

4. The proposed project is **not** consistent with the intent of the Council Policy 6-27 for Evaluation of 24-hour Uses.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will
  - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
  - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
  - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
  - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
  - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby denied.

- c: Beatriz Alvarez, 2751 Sugarplum Drive, San Jose, CA 95148  
Building Division (2),  
Engineering Services